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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/039,574	01/02/2002	Kellar Annunzio	14134-002001	1771
22434	7590	07/07/2005	LEWIP001	
BEYER WEAVER & THOMAS LLP P.O. BOX 70250 OAKLAND, CA 94612-0250			EXAMINER APTERGUT, JEFF H	
			ART UNIT 1733	PAPER NUMBER

DATE MAILED: 07/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

BEYER WEAVER & THOMAS, LLP
ATTY WJE ASSOC. WJE
ACTION: Final Reject 2-3mo
Not. of Appeal
DUE DATE: 9-7-05
10-7-05 + 1-17-05
DOCKETED 1-12
DOCKET NO. LEWIP001-US

PTO-90C (Rev. 10/03)

**Office Action Summary**

Application No.

10/039,574

Applicant(s)

AUTUMN, KELLAR

Examiner

Jeff H. Aftergut

Art Unit

1733

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 18 May 2005.  
2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-50 is/are pending in the application.  
4a) Of the above claim(s) 1-23,30-35 and 41-50 is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 24-29 and 36-40 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_

***Claim Rejections - 35 USC § 102***

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 24-29 and 36 are rejected under 35 U.S.C. 102(b) as being anticipated by Autumn et al or Liang et al for the same reasons as presented in the Office action dated April 7, 2005, paragraph 2.

In each one of Liang or Autumn the references suggested that the seta was attached on the end of a number 2 insect pin (see page 684 of the article to Autumn et al under "Methods" and page 35 of the article to Liang et al under the heading "Experimental Setup"). It should be noted that the "flexible beam" of applicant's claims was defined as one being formed of spring steel or brass (page 6, lines 21-24) and one which had a length of between 1-5 cm, a width of between 0.5-1 cm and a thickness between 0.1-0.3 mm (page 3, lines 1-3). As a number 2 insect pin was formed from spring steel having a length of 3.8 cm and a diameter of 0.45 mm (it doesn't have a width and thickness but rather a diameter, however the diameter would have been understood to more closely correspond to the thickness of the applicant's "flexible beam"), see the information regarding "Morpho Insect Pins from the Bone Room web site, copy enclosed) it is deemed that the reference to either one of Liang et al or Autumn et al suggested that one skilled in the art would have joined a seta to the end of a flexible beam and manipulated the same in accordance with the claimed manner that the seta was manipulated.

***Claim Rejections - 35 USC § 103***

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
4. Claims 37-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Autumn et al or Liang et al for the same reasons as expressed in paragraph 4 of the Office action dated April 7, 2005.

***Election/Restrictions***

5. This application contains claims 1-23, 27-35, and 41-50 drawn to an invention nonelected without traverse in the previous response. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.
6. Claims 1-23, 27-35 and 41-50 have been withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 12-28-04.

***Response to Arguments***

7. Applicant's arguments filed May 18, 2005 have been fully considered but they are not persuasive.

The applicant essentially argues that the prior art did not attach the seta to a flexible beam for manipulation. However, as noted above, applicant's flexible beam is nothing more than a member formed from spring steel for example which has the

specified thickness, length and width. The references to Liang or Autumn both suggested that those skilled in the art at the time the invention was made would have attached to seta onto the end of an insect pin. This insect pin was formed from spring steel (the same materials selected by applicant for the flexible beam as noted above) and is of a length and diameter which was well within the range of the length and width and thickness of the "flexible beam" of the claims. It should be noted that the claims do not exclude the use of an insect pin as a flexible beam within the meaning of the same. It is agreed that the sensor is not the flexible beam, rather the sensor is what the end of the seta was disposed against in order to determine the specific forces acting in the operation. the references both suggested mounting the seta onto the end of an insect pin (a no. 2 insect pin). The applicant argues that this is a "rigid rod", however as noted above, the insect pins were clearly formed from a similar material employed by applicant and of a size similar to applicant's flexible beam, therefore the insect pins of the references are deemed to be substantially similar to the "flexible beam" recited in the claims. It should be noted that the internet article cited is not part of the rejection but rather is evidence which shows what the ordinary artisan would have understood that insect pin to have been (i.e. a flexible beam" within the scope of the term as defined by applicant).

It should be noted regarding the rejection under 35 USC 103, that while the references did not attach a plurality of seta onto the insect pin, the rejection expressly stated that a Gecko employed thousands of Seta to remain on the surfaces upside down. Applicant did not dispute the same. Therefore, whether one seta or multiple seta

would have been attached on the end of the insect pin for manipulation would have been within the purview of the ordinary artisan. As noted above a number 2 insect pin clearly falls within the scope of a "flexible beam" within the meaning of the term as defined by applicant in the specification.

**Conclusion**

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeff H. Aftergut whose telephone number is 571-272-1212. The examiner can normally be reached on Monday-Friday 7:15-345 pm.

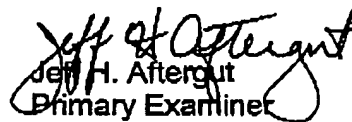
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Blaine Copenheaver can be reached on 571-272-1156. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Jeff H. Aftergut  
Primary Examiner  
Art Unit 1733

JHA  
July 3, 2005